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8 Special Master

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10 **UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA**
11 **(SAN FRANCISCO DIVISION)**

12 GABE BEAUPERTHUY, et al., on behalf of
13 themselves and all others similarly situated
14 specifically referenced herein,

15 Plaintiffs,

16 vs.

17 24 HOUR FITNESS USA, INC., a California
18 corporation dba 24 HOUR FITNESS; SPORT
19 AND FITNESS CLUBS OF AMERICA, INC.,
20 a California corporation 24 HOUR FITNESS,

21 Defendants.

22 Case No. 06-0715 SC

23 **SPECIAL MASTER'S REPORT
AND RECOMMENDATION RE
SELECTION PROCESS FOR FIRST
16 ARBITRATIONS**

24 INTRODUCTION

25 Among the tasks assigned to the Special Master by Judge Conti is to assist in the
26 recommendation of a fair process for the selection of arbitrators for the 16 arbitrations ordered to
27 go forward by Judge Conti is his Order of December 2, 2011.

28 The undersigned Special Master met with counsel for the parties on February 22, 2012
and suggested that they "restart" the meet and confer process for mutually selecting arbitrators.
The parties had previously submitted a list of acceptable arbitrators to each other. Claimants
suggested 11 names from JAMS. Defendants proposed 15, six of whom are affiliated with
JAMS.

The parties were unable to achieve final resolution of the matter. Accordingly, the Special Master scheduled a hearing on the selection process for April 13, 2012 at JAMS.

The parties appeared on that date. Claimants were represented by attorneys Thomas G. Foley, Jr., Justin Karczag, and Richard E. Donahoo. Defendants were represented by John C. Kloosterman and Laura E. Hayward of the Littler office, and Larry Wollert II, Vice President and Corporate Counsel of 24 Hour Fitness.

ANALYSIS AND DISCUSSION

The 16 individuals are subject to the 2001 arbitration agreement, which provides that the parties must mutually agree upon an arbitrator. At the hearing of April 13, the Special Master suggested, after some discussion, that each side propose four arbitrators from their respective lists for a total of eight to handle the 16 cases. The parties, through counsel, accepted this proposal.

Each side was afforded an additional opportunity to strike or object to any of the arbitrators nominated by the other side. Prior to the hearing, claimants objected to three arbitrators nominated by 24 Hour. At the hearing, defendants objected to three arbitrators nominated by claimants, and claimants objected to two additional arbitrators nominated by 24 Hour. This process left eight nominees from claimants' list, and 10 from 24 Hours' list.

The following have been nominated as arbitrators for the 16 individuals covered by the December 2, 2011 Order of the Court: 1. Hon. Peter D. Lichtman (Ret.), 2. Michael Loeb, Esq., 3. Hon. Steven Stone (Ret.), 4. Hon. Edward Wallin (Ret.), 5. John Kagel, 6. Hon. Ellen James (Ret.), 7. Hon. Raul Ramirez (Ret.), and 8. Hon. John Leo Wagner (Ret.).

Some of the nominees are affiliated with JAMS, and some are not.

The Special Master solicited comments about whether a single administrator should be appointed to handle the scheduling of the arbitrations and other matters. Claimants proposed that JAMS handle the administrative responsibilities. 24 Hour objected, referring to its letter of April 5, 2012 to the Special Master. 24 Hour noted in that letter that scheduling the arbitrations, coordinating the locations where the arbitrations would be held and other details would be

1 relatively straightforward. In addition, 24 Hour objected to paying administrative fees, when
2 such matters could be handled by the staff of the respective law offices.

3 The Special Master points out that we are dealing only with the first 16 arbitrations at
4 present. The Special Master has spoken with Mr. Derek Ryan of JAMS, who already has some
5 familiarity with these cases. Mr. Ryan indicated that JAMS would be willing to administer these
6 matters, even if all of the nominated arbitrators are not affiliated with JAMS. ~~In addition JAMS~~
7 ~~would negotiate a special rate with the attorneys. Under these circumstances, it would be more~~
8 ~~efficient and promote the uniform adjudication of these matters to appoint JAMS as~~
9 ~~administrator.~~ Accordingly, the Special Master recommends that the Court adopt this proposal.

10 At the April 13 hearing, the Special Master suggested that the Federal Rules of Evidence
11 apply in each of the 16 arbitrations subject to any flexibility deemed appropriate by the
12 individual arbitrators. There was no objection to this proposal. Therefore, the Special Master
13 recommends that the Court adopt this recommendation.

14 The parties also addressed the manner in which the 16 cases would be assigned to an
15 arbitrator. They agreed that each arbitrator will handle two cases. Counsel for 24 Hour suggested
16 that the cases be grouped by geographic location. After some discussion, the parties agreed that
17 the cases will be randomly assigned by the Special Master on the basis of additional information
18 to be provided by counsel – specifically the name of the employee, the various locations where
19 he or she worked for 24 Hour, and their titles or positions held.

20 The list of assignments is attached hereto.

21 Counsel for 24 Hours stated that they intend to file pre-arbitration motions, chiefly a
22 motion for summary adjudication. In addition, there may be outstanding discovery issues,
23 including depositions and additional document production. These matters will be scheduled and
24 coordinated by the assigned arbitrators.

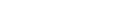
25 All parties agreed and the Court has previously ordered that these arbitrations will take
26 place in the Northern District of California.
27
28

The parties estimate that each arbitration will take one or two days. The parties stated that they expect these 16 arbitrations will be completed by the end of 2012. The Court may wish to consider a shorter timeframe.

SUMMARY OF REPORT AND RECOMMENDATIONS

1. A list of the nominated arbitrators and the cases to which they are assigned is attached;
2. The Federal Rules of Evidence will apply in so far as possible;
3. ~~JAMS will administer these 16 arbitrations at a negotiated rate;~~
4. All of the 16 arbitrations will take place in the Northern District of California;
5. Any preliminary dispositive motions and discovery matters will be handled by the arbitrator in the assigned case;
6. These 16 arbitrations will be completed by _____ or no later than December 31, 2012;
7. Any subsequent disputes regarding the selection of arbitrators for the 16 arbitrations will be submitted to the Special Master for resolution or submission of a further Report and Recommendation to the Court.

Dated: 4-19-2012


Hon. James Larson (Ret.)
Special Master

Recommendation [approved-declined-modified]

Dated: April 26, 2012


Hon. Samuel Conti
United States District Judge

LIST OF ASSIGNMENTS

<u>Arbitrator</u>	<u>Claimant</u>
Hon. Peter D. Lichtman (Ret.)	Gabe Beauperthuy
John Kagle	Nathaniel Hoelk
Michael Loeb	John Davidson
Hon. Ellen James	Adam Sherrill
Hon. Steven Stone (Ret.)	Nathaniel Fennell
Hon. Raul Ramirez (Ret.)	Christopher Vincent
Hon. Edward Wallin (Ret.)	Heidi Gabalski
Hon. John Leo Wagner (Ret.)	Steve Orrico
	Anne Dillon
	Kimberly Struble
	Patrick Frey
	David Kaipi
	Lindsay D'errico
	Evan Sooper
	David Guy
	Andrew Newcomb